



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

NB:LTG:JLG:MRM

*610 Federal Plaza
Central Islip, New York 11722*

November 25, 2019

By ECF with Courtesy Copy by email

Judge Joan M. Azrack
U.S. District Court
Eastern District of New York
Federal Plaza, Courtroom 920
Central Islip, New York 11722

Re: United States v. Christopher McPartland and Thomas J. Spota
Criminal Docket No. 17-CR-587 (JMA)

Dear Judge Azrack:

As requested by the Court, the Government submits this letter to provide the citations and sources of the contents of the Government's Request to Charge, submitted November 22, 2019.

CHARGE	CITATION
Role of the Court	Instruction 2-2: Role of the Court, 1 Modern Federal Jury Instructions-Criminal ¶ 2.01 (2019)
Duties of the Jury	Instruction 2-3: Role of the Jury, 1 Modern Federal Jury Instructions-Criminal ¶ 2.01 (2019)
Parties Equal Before the Court	Instruction 2-5: The Government as a Party, 1 Modern Federal Jury Instructions-Criminal ¶ 2.01 (2019)
Presumption of Innocence and Burden of Proof	Instruction 4-1: Presumption of Innocence and Burden of Proof, 1 Modern Federal Jury Instructions-Criminal ¶ 4.01 (2019)
Proof Beyond a Reasonable Doubt	Instruction 4-2: Reasonable Doubt, 1 Modern Federal Jury Instructions-Criminal ¶ 4.01 (2019)
What is Evidence?	Instruction 5-4: Testimony, Exhibits, and Stipulations, 1 Modern Federal Jury Instructions-Criminal ¶ 5.01 (2019)

What is Not Evidence?	Adapted From: Instructions 5-1: Marshalling Evidence; 5-3: Questions; 1 Modern Federal Jury Instructions-Criminal ¶ 5.01 (2019), and Instruction 5-4: Testimony, Exhibits, and Stipulations, 1 Modern Federal Jury Instructions-Criminal ¶ 5.02 (2019)
Direct and Circumstantial Evidence	Adapted From: Instruction 5-2: Direct and Circumstantial Evidence, 1 Modern Federal Jury Instructions-Criminal ¶ 5.01 (2019), and Instruction 6-1: Inference Defined, 1 Modern Federal Jury Instructions-Criminal ¶ 6.01 (2019)
Number of Witnesses and Uncontradicted Testimony	Instruction 4-3: Number of Witnesses and Uncontradicted Testimony, 1 Modern Federal Jury Instructions-Criminal ¶ 4.01 (2019)
Rulings by the Court	Adapted From: Instructions 2-8: Conduct of Counsel; 2-2: Role of the Court; 2-3: Role of the Jury, 1 Modern Federal Jury Instructions-Criminal ¶ 2.01 (2019)
Witness Credibility- General Instruction	Instruction 7-1: Witness Credibility, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019)
Preparation of Witnesses	Adapted From: S2 Modern Federal Jury Instructions-Criminal ¶ 3.02 (2019).
Interest In Outcome	Instruction 7-3: Interest of Outcome, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019)
Expert Testimony	Instruction 7-21: Expert Witnesses Generally, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019)
Law Enforcement Witnesses	Instruction 7-16: Law Enforcement Witnesses, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019)
Particular Investigative Techniques Not Required	Adapted From: S2 Modern Federal Jury Instructions-Criminal ¶ 3.19 (2019).
Accomplices Called by the Government	Instruction 7-5: Accomplices Called by the Government, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Accomplices Called by the Defense	Instructions 7-6: Accomplices Called by the Defense, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Un-Indicted Co-Conspirators as Government Witness	Instruction 7-7: Un-Indicted Co-Conspirators as Government Witness, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Witnesses Testifying Pursuant to a Cooperation Agreement	Instruction 7-5: Accomplices Called by the Government, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Government Witness-Not Proper to Consider Guilty Plea	Instruction 7-10: Government Witness- Not Proper to Consider Guilty Plea, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Statutory Immunity of a Government Witness	Instruction 7-8: Statutory Immunity of a Government Witness, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Assertion of a Testimonial Privilege by Witness	Instruction 7-13.1: Assertion of a Testimonial Privilege by Witness, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).

Defendant's Right Not to Testify	Instruction 5-21: Improper Consideration of Defendant's Right Not To Testify; 1 Modern Federal Jury Instructions-Criminal ¶ 5.07 (2019).
Defendant's Interest if Defendant Testifies	Instruction 7-4: Defendant's Interest if Defendant Testifies, 1 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019).
Date Approximate	Adapted From: S1 Modern Federal Jury Instructions-Criminal 3.08 (2019).
Other Persons Not on Trial	Adapted From: 1 Modern Federal Jury Instructions-Criminal ¶ 3.01 (2019); <i>United States v. McFarlane</i> , 491 F.3d 53 (2d Cir. 2007); Instruction 6-7: Uncalled Witness Equally Available, 1 Modern Federal Jury Instructions-Criminal ¶ 6.04 (2019).
All Available Evidence Need Not Be Produced	Adapted From: 3 Kevin F. O'Malley, et al., Federal Jury Practice and Instructions § 105.11 (5th ed. 2009).
Stipulations	Instruction 5-6: Stipulation of Facts, 1 Modern Federal Jury Instructions-Criminal ¶ 5.02 (2019).
Charts and Summaries	Instruction 5-12: Charts and Summaries, 1 Modern Federal Jury Instructions-Criminal ¶ 5.05 (2019).
Motive	Adapted From: Motive Explained, S1 Modern Federal Jury Instructions-Criminal 5.04 (2019); Instruction 46-59: Intent to Influence Court Testimony, and Instruction 46-60: Intent to Hinder Communication to Law Enforcement, 2 Modern Federal Jury Instructions Criminal 46.09 (2019); Instruction 6-18: Using Motive For Intent, 1 Modern Federal Jury Instructions-Criminal ¶ 6.06 (2019).
Guilty Knowledge From Clandestine Behavior	Instruction 6-19: Guilty Knowledge From Clandestine Behavior, 1 Modern Federal Jury Instructions-Criminal ¶ 6.06 (2019).
Acting Knowingly and Intentionally	Adapted From: Instruction 3A-1: Knowingly; 3A-4: Intentionally, 1 Modern Federal Jury Instructions-Criminal ¶ 3A.01 (2019).
Aiding and Abetting	Adapted From: Title 18 United States Code §2 (a)(b); Instruction 11-2:Aiding and Abetting, 1 Modern Federal Jury Instructions-Criminal ¶¶ 11.01 and 11.02; (2019); <u>United States v. Sampson</u> , 898 F.3d 287 (2d Cir. 2018) (Charge given in <u>Sampson</u> , 13-CR-269 (S-5)(DLI) at 51-53).
Count One: Conspiracy to Tamper With Witnesses and Obstruct an Official Proceeding	Adapted From: <u>United States v. Sampson</u> , 898 F.3d 287 (2d Cir. 2018) (Charge given in <u>Sampson</u> , 13-CR-269 (S-5)(DLI) at 39-43); Title 18 United States Code, §§ 1512(b)(1); 1512(b)(2)(A); 1512(b)(3); and 1512(c)(2); and Instruction 19-: Purpose of the Statute, 1 Modern Federal Jury Instructions-Criminal ¶ 19.01 (2019).
First Element: Existence of the Agreement	Adapted from: Instruction 19-4: Existence of Agreement, 1 Modern Federal Jury Instructions-Criminal ¶ 19.01 (2019).

Second Element: Membership in the Conspiracy	Adapted from: Instruction 19-6: Membership in Conspiracy, 1 Modern Federal Jury Instructions-Criminal ¶ 19.01 (2019).
Object Offense One: Witness Tampering in Violation of 18 U.S.C. §1512(b)(1) First Element: Use of Intimidation or Corrupt Persuasion	Instructions 46-57 and 46-58: Elements of the Offense and Intimidation, Threat, or Corrupt Persuasion, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense One: Witness Tampering in Violation of 18 U.S.C. §1512(b)(1) Second Element: Intent to Influence Testimony in Court	Instruction 46-59: Intent to Influence Testimony in Court, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense Two: Witness Tampering in Violation of 18 U.S.C. §1512(b)(2)(A) First Element: Use of Intimidation or Corrupt Persuasion	Instruction 46-59: Intent to Influence Testimony in Court, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense Two: Witness Tampering in Violation of 18 U.S.C. §1512(b)(2)(A) Second Element: Withhold Testimony from an Official Proceeding	Instruction 46-59: Intent to Influence Testimony in Court, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense Three: Witness Tampering in Violation of 18 U.S.C. §1512(b)(3) First Element: Intimidation or Corrupt Persuasion	Instruction 46-59: Intent to Influence Testimony in Court, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense Three: Witness Tampering in Violation of 18 U.S.C. §1512(b)(3) Second Element: Intent to Hinder Communication to Law Enforcement	Instruction 46-60: Intent to Hinder Communication to Law Enforcement, 2 Modern Federal Jury Instructions-Criminal ¶ 46.09 (2019).
Object Offense Four: Obstructing an Official Proceeding in Violation of 18 U.S.C. §1512(c)(2) First Element: Obstructing an Official Proceeding	Instruction 46-70: Obstruction of an Official Proceeding, 2 Modern Federal Jury Instructions-Criminal ¶ 46.11 (2019).

Object Offense Four: Obstructing and Official Proceeding in Violation of 18 U.S.C. §1512(c)(2) Second Element: Defendant Acted Corruptly	Instruction 46-71: Defendant Acted Corruptly, 2 Modern Federal Jury Instructions-Criminal ¶ 46.11 (2019).
Count Two: Witness Tampering and Obstruction of an Official Proceeding	Adapted From: 18 U.S.C. §1512(b)(1); 18 U.S.C. §1512(b)(2)(A); 18 U.S.C. §1512(b)(3); and 18 U.S.C. §1512(c)(2).
Witness Tampering in Violation of 18 U.S.C. §1512(b)(1)	See <i>supra</i> re: Witness Tampering in Violation of 18 U.S.C. §1512(b)(1)
Witness Tampering in Violation of 18 U.S.C. §1512(b)(2)(A)	See <i>supra</i> re: Witness Tampering in Violation of 18 U.S.C. §1512(b)(2)(A)
Witness Tampering in Violation of 18 U.S.C. §1512(b)(3)	See <i>supra</i> re: Witness Tampering in Violation of 18 U.S.C. §1512(b)(3)
Obstruction of an Official Proceeding in Violation of 18 U.S.C. §1512(c)(2)	See <i>supra</i> re: Obstruction of an Official Proceeding in Violation of 18 U.S.C. §1512(c)(2)
Aiding and Abetting	Adapted From: Title 18 United States Code §2 (a)(b); Instruction 11-2:Aiding and Abetting, 1 Modern Federal Jury Instructions-Criminal ¶¶ 11.01 and 11.02; (2019); <u>United States v. Sampson</u> , 898 F.3d 287 (2d Cir. 2018) (Charge given in <u>Sampson</u> , 13-CR-269 (S-5)(DLI) at 51-53).
Count Three: Obstruction of Justice	Adapted From: Instruction 46-3: Official Proceeding, 2 Modern Federal Jury Instructions-Criminal ¶ 46.01 (2019) and Title 18, United States Code §1503(a)
First Element: Official Proceeding	Instruction 46-4: Official Proceeding, 2 Modern Federal Jury Instructions-Criminal ¶ 46.01 (2019).
Second Element: Knowledge	Instruction 46-5: Official Proceeding, 2 Modern Federal Jury Instructions-Criminal ¶ 46.01 (2019).
Third Element: Acted to Obstruct or Impede	Instruction 46-6: Acted to Instruct or Impede, 2 Modern Federal Jury Instructions-Criminal ¶ 46.01 (2019).
Aiding and Abetting	See <i>supra</i> re: Aiding and Abetting.
Count Four: Accessory After the Fact to the Deprivation of Christopher Loeb's Civil Rights	Adapted From: Instruction 12-2: Elements of the Offense, 1 Modern Federal Jury Instructions-Criminal ¶ 12.01 (2019); 18 U.S.C. § 3.

First Element: Commission of the Underlying Offense: Deprivation of a Civil Right in violation of 18 U.S.C. §242; First Element of Deprivation of a Civil Right: 18 U.S.C. §242: The Color of Law	Adapted From: Instruction 12-3: Commission of Underlying Offense, 1 Modern Federal Jury Instructions-Criminal ¶ 12.01 (2019); Adapted From: Instruction 17-3: Color of Law, 1 Modern Federal Jury Instructions-Criminal ¶ 17.01 (2019); 18 U.S.C. § 242.
Second Element of Deprivation of a Civil right: Deprivation of a Right	Adapted From: Instruction 17-5: Deprivation of a Federal Right, 1 Modern Federal Jury Instructions-Criminal ¶ 17.01 (2019).
Third Element of Deprivation of a Civil Right: Defendant Acted Willfully	Adapted From: Instruction 17-6: Defendant Acted Willfully, 1 Modern Federal Jury Instructions-Criminal ¶ 17.01 (2019).
Second Element of Accessory After the Fact: Defendant's Knowledge	Instruction 12-4: Defendant's Knowledge, 1 Modern Federal Jury Instructions-Criminal ¶ 12.01 (2019).
Third Element of Accessory After the Fact: Defendant Assisted Offender	Instruction 12-5: Defendant Assisted Offender, 1 Modern Federal Jury Instructions-Criminal ¶ 12.01 (2019).
Venue	Instruction 3-11: Venue, 1 Modern Federal Jury Instructions-Criminal ¶ 3.01 (2019).

Rules Regarding Deliberations	Adapted From: S2 Modern Federal Jury Instructions-Criminal ¶ 7.01 (2019); Instruction 1-1: Instructions at Beginning of Trial; Instruction 1-2: Contact with Others; Instruction 1-3: Note Taking by the Jury; Instruction 1-5: Anonymous Jury; 1 Modern Federal Jury Instructions-Criminal ¶ 1.02 (2019); and Instruction 2-3: Role of the Jury, 1 Modern Federal Jury Instructions-Criminal ¶ 2.01(2019); and Instruction 9-1:Punishment; Instruction 9-3: Instruction-Right to See Exhibits and Testimony; Instruction 9-5: Instruction-Selection of a Foreperson; Instruction 9-6: Instruction-Sequestration During Deliberations; Instruction 9-7: Duty to Consult and Need for Unanimity, 1 Modern Federal Jury Instructions-Criminal ¶ 9.01, ¶ 9.03, ¶ 9.05, ¶ 9.06. ¶ 9.07 (2019).
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If the Court requires any additional information regarding the above listed citations and references, please contact the undersigned Assistant United States Attorneys.

Respectfully submitted,

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